

This is Christina Fahmy. The date is March 1, 2004, and I am here interviewing Mike Levy, and this is for the Oral Legal History Project at Penn.

First of all, thank you so much for meeting with me.
My pleasure.

I'd like to start with a couple of questions about your childhood.
Okay, I didn't know we were going back that far.

All the way back. Where were you born?
I was born in Muskogee, Oklahoma. And the next question is why, and it's because my father was in the army at the time and was stationed there. My mother moved back to Newark NJ where they both grew up shortly before my father was shipped overseas.

Do you have siblings?
One brother. He's three years younger.

What does he do?
He's the director of the Center City District, the Paul Levy who you read about in the newspapers from time to time. He and I both are in the street cleaning business.

You said that your father was in the army.
Correct.

What did your mother do?
She was a homemaker.

Did your family move around a lot?
No. He was only in the army during World War II. He enlisted in 1942 and was discharged in 1946. That was the end of his army career.

What did he do afterwards?
He worked for a company in New York that had something to do with movie distribution. I don't know really what it was because he left there by the time I was about 6 or 7 and worked for a wire manufacturing company and ended up being the plant manager.

What were you like as a child?
Perfect. I was.. . I actually was very serious and very obedient and everything that a parent wants, and my brother was just the opposite. So we were an interesting pair.

So you liked school, then?

Yeah.

And you did well.

I did well.

What did you like best about school? Did you have a favorite class or a favorite teacher?

My favorite teacher I guess was, if you go all the way back that far was probably in seventh and eighth grade. I had a math teacher who was a man, who was relatively young at that time, and was very good, really knew how to deal with kids. Particularly at that age, you know seventh and eighth grades.

Did you play any sports?

No. I had two left feet in everything. I was a swimmer, but there was no place to swim. Although, I kept doing it, I ended up swimming in college. But I didn't swim in elementary school or high school.

Which colleges did you apply to?

I don't remember any of them. Brown was one of them, because I got in there.

Do you remember how you made the decision to go to Brown?

They took me. Off the waiting list.

What was your major?

I majored in Mathematics.

How did you choose that?

I loved math, starting you know, in seventh or eighth grade. I just always was interested in it. I liked it a lot, and I kept liking it. And ended up doing well enough to major in it.

What career did you think you would have when you went to college?

I thought I would go to graduate school and end up, you know, being a college professor, teaching mathematics. That's where I was headed.

What changed that?

Not being smart enough. I realized, you know, I was doing well. I was basically a B student. I was in a Bachelor of Arts program so I was taking history and literature and political science and the rest. And I guess it was, it was really my senior year, and I had been going along, and in my senior year, I remember taking a course in topology. The professor had been covering some material, and then expanded into a whole different way of looking at it. And I sat there in the class, in utter amazement, and thought to myself, I would never have thought of

doing that. And I occurred to me that while I was intelligent and hardworking, you had to be brilliant to go on in mathematics, and I wasn't. So I kind of cast about, trying to figure out, okay what are you going to do now. And I was friendly with the admissions director at the school, and talking to him one day, and his advice to me was law school is the ideal place for the senior who doesn't know what he wants to do next year. So I ended up applying to law school.

Did you only apply to Penn or did you apply to other places?

No. I applied to Penn, Rutgers because my family lived in Newark. I think Columbia, and Cornell. My recollection was I got into Rutgers, I was rejected at Columbia, I was waitlisted at Cornell, and I was accepted at Penn. So it was an easy choice.

Did you like Philadelphia when you first moved here?

Yes. You know four years in Providence, Rhode Island back then . . . Philadelphia was a major improvement.

So you said that your admissions director just kind of pushed you towards law school.

Yeah. He kind of got me thinking that way. You know, clearly, if it hadn't been something I would have thought about otherwise I wouldn't have done it. But it was something to think about. It seemed to fit with what I had done. It was a logical field, so I could use the logic I had in math. I enjoyed literature. I had taken political science. So it wasn't like I was completely out of the ballpark. And my dad had gone to law school and had actually practiced before he went into the army. And then when he came back out and had a wife and a kid, he wasn't about to start a practice back up.

Are there any other lawyers in your family besides your father?

No.

Can you remember what your opinion of lawyers was before you entered law school?

Not really. I mean, in terms of high or low, I kind of had a high opinion. I thought of it as an intellectual profession, and one that was supposed to be doing the right thing, although I've since learned that that's not always true.

Did you think about taking time off between college and law school?

Not during the Vietnam War. That was not an option.

What was your favorite class at Penn?

Probably criminal law. And I say that because I took basic criminal law and advanced criminal procedure when I was there. Paul Mender taught criminal law and Anthony Amsterdam taught advanced criminal procedure – and both were excellent professors. And probably one of the reasons I ended up in

criminal law was because I got intrigued by it. Criminal law struck me as kind of a great mix of practical, downright dirty, and also at the same time mixing incredibly difficult ethical and moral problems. It's fundamentally about right and wrong when you get right down to it.

When you think about Penn, is there anything you remember particularly fondly or particularly not fondly?

I didn't like first year. I know that. I mean, it was just incredibly boring and incredibly frustrating. Part of that was trying to learn the way of thinking and being frustrated with kind of the nitpicking I probably do myself today. Getting your mind into that mode was difficult. Majoring in mathematics was in some ways a hindrance, because I was used to basically symbolic logic, and I had to learn that words can be slippery, that words have multiple meanings. And you have to be listening carefully to an argument to catch when the logic shifts. And it took a while for that to catch on. And then Oliver Wendell Holmes — the life of the law has not been logic, it has been experience. There were times when you'd think, well logically the law should be this way. But when you would go back and study how it developed, how it came to be what it was, it made sense, historically. But it didn't make sense necessarily logically. But that's where we were, and that's how we were going to go.

What was it like to be in graduate school during the Vietnam era?

That's a very hard question to answer, only because it's very hard to explain to anyone who didn't live through that era what it was like. This country almost came apart at the seams during that era. The splits between old and young, blue collar and upper middle class, educated vs. uneducated, people who favored the war vs. people who were against the war — it's hard to capture that. And a very angry student generation, very activist. 1968, which was the year I was in my second year of law school, was the year the Tet Offensive was launched, Martin Luther King [Jr.] was killed and Bobby Kennedy was killed all in a few month period. There was literally a sense that everything was falling apart. And I wouldn't say that it affected the law school in a bad way. In fact, there were no pitched battles or anything like that, although my old roommate just wrote a piece for the alumni magazine about being on some advisory board where they basically walked out of a meeting with the faculty, I don't remember what the issue was. And it was part of the beginning of student protests in the law school. There was just a level of anger of disarray in the country that I can't convey in five minutes to somebody. Clearly when people think of the sixties, that's the time they think of — it's the time of sex, drugs, and rock and roll. Marijuana — when I was in college, when I graduated, people drank, nobody smoked marijuana. By the time I was in law school, marijuana was all over the Penn campus. The change in attitudes towards sex happens in the late 60s, probably because the pill came in, and it became much less threatening. And rock and roll

music certainly caught on very big and became very angry at that point and celebrated the drug culture. All of that's going on while I'm trying to be in a very logical profession in law school.

I'm wondering if— so much of what went in the 1960s was a reaction to law, and a reaction to strict laws, and a reaction to the way society had been formed and shaped by the generation that came before you. Is that accurate?

You know, there's so many things going on there. Certainly, you had the civil rights movement, which started in the 50s, which began to challenge the status quo. Certainly I grew up watching that, and then we get a generation that is either going to choose to go fight in the Vietnam War or protest against it. My parents' generation— my dad enlisted in the army when he was 34. Mine was a generation that, you know, we didn't want to serve. We didn't think the war was right. This was not the good war that my dad had fought in. In fact, my senior year when I was thinking about what I was going to do next year, I told my dad that I actually was thinking about signing up and doing my three year hitch with the army just to get it over with, he told me he didn't want me to do that. So you had that, my generation was certainly driven by the draft, the risk that if you dropped out of school that you were going to go and probably get sent over to Vietnam had an impact. You know the voting age amendment at that point— if someone's old enough to die for their country at age 18, why aren't they old enough to vote. So you have all of that. Why else, you know, why do drugs suddenly become big at that time, I don't know. But it all kind of unraveled, all at the same time.

It must have been a very . . . interesting time.
That's a good way to describe it.

I saw from your resume that you were in the Moot Court competition at Penn, do you remember what case you argued?

I don't remember the name of it. It was very strange. It was a perfect Federal Courts case. It involved the condemnation of a piece of property, and the question was whether for federal condemnation purposes you used state law or federal law to determine things like moving costs and there were a whole bunch of other things that would not be covered in a federal condemnation. The argument on the one side was that it's federal and you needed uniform law. The other side was if my building gets condemned by the federal government I get x amount, if my neighbor's building gets condemned by the federal government he gets x + y, how do we face each other and understand what happened to us?

Did you think that was a good experience to have?

It was a great experience to have. It wasn't the greatest problem to argue. But just having to put together the brief, the court that they had- it was Justice

Stewart, Chief Judge Fulds from the New York Court of Appeals and Judge Wike from the 6th Circuit. So they had a scary panel.

Did you feel prepared in general to be a lawyer when you left Penn?

I don't think anybody's prepared to be a lawyer when they leave law school. Law school teaches you ways of thinking and ways of approaching a problem. It doesn't teach you a lot of the practical stuff which is certainly the frustration you feel by the middle of your second year of law school, and certainly by your third year, that this is all very good arguing how many angels can dance on the head of a pin, but I don't know how to file a brief in the Court of Appeals. But I understand the thinking here on both sides because I had the frustration, but I understand that in your law school career there's a certain amount they can give you. As Professor Mirshkin said to us, you can learn very quickly how many copies you have to file and what the filing fee was when you have to file something, you don't need to spend three years of law school learning that.

Had you decided on criminal law at the time of graduation?

Yeah. And I already had . . . I clerked for a Common Pleas judge for 6 to 8 months, but I already knew I wanted to go into criminal law and work in the DA's office or defender's office.

For the first few years after graduation, you worked for the Defender Association of Philadelphia. What did that organization do at that time?

Criminal defense work of the indigent and everything except murder. We tried everything frok, petty misdemeanors to serious violent felonies.

Was that experience a bit like being thrown in at the deep end?

Yeah. When I first started off you did preliminary arraignments at 8th and Race at the police administration building which is just people coming up for their initial bail hearing. That was fairly simple, you got the hang of it in a few hours. Then one day the boss Vince Siccardi said to me, "Tomorrow go to 22nd and Honeypark and handle the preliminary hearings." And I said, "I've never seen a preliminary hearing." He said, "You know what, don't worry about it, you're the public defender. You'll go last, private counsel goes ahead of you. Just watch what they do and you'll get the hang of it." Well, I go out there and I've got all the cases on the list and there wasn't any private counsel. So yeah, it was like getting thrown into deep water.

You moved into the attorney general's office afterwards.

First, I went to the district attorney's office.

How did you get that opportunity?

I was, all modesty aside, doing a pretty good job at the Defender Association. I was interested in trying to be a prosecutor. I mean, for some people, they can never be prosecutors. And there are some prosecutors who say they can never be defense lawyers, and I'm not one of either group. And so I was interested in being a prosecutor, and there was a friend of mine in the DA's office who had been encouraging me to apply. And I did finally, and I got hired.

Having done both prosecution and defense, would you say that there's any real difference in mindset needed?

Yes and no. In order to do a good job on either side, I think it helps to know what the other side's going to be doing and how they're thinking. Being a good defense lawyer means understanding how the prosecution puts a case together. So you need to be able to look at it and think, what are the holes here? Where are the weaknesses? Being a good prosecutor means thinking what's a good defense lawyer going to do to take this case apart and how do I shore it up? So you need to think within the same box, on the other hand the defense lawyer's got to be thinking in terms of where are the weaknesses, where are the places I can argue reasonable doubt, and a prosecutor's got to be thinking, where are the weaknesses, how do I shore them up, how to I argue that the argument on reasonable doubt is nonsense. So you have a somewhat different mindset as a prosecutor or defense lawyer, but you're thinking, you should be thinking within the same four corners.

So your work as a defense lawyer with the Defender Association, that probably helped you be a

I think so. I thought about what would I do if I were defending this case and started to do things to make sure that no one could do that to me.

When you entered private practice in the middle of the 1970s, why did you choose to make that shift?

I had two friends who had gone out in private practice. They were doing well and they said come join us. And I thought, hey, that sounds fun. Of course, as soon as I joined them their main source of business dried up. We practiced together . . . actually, I was there for four years. One of them went back in early 1978, when Ed Rendell was elected. We had all been in the homicide division of the DA's office, and Ed Rendell, the current governor, had been the chief of the homicide division. And when Rendell won the election, he asked Bob Lawler, one of my partners to come back and be Chief of Appeals. So it was then just Shuman and Levy. And then after about a year and a half, Shuman went back to the DA's office, and it was just Levy. And Levy found he was running around like a chicken without a head. Being a jack of all trades and a master of none and not making enough money. And it stopped being fun.

Because you were alone or because you were so busy?

Both. You know, the three of us have remained good friends, which is unusual to hear of a partnership that's split up. And we had a great time. We didn't make any money, but we had a great time practicing law together.

Your career seems to be marked by a bunch of different shifts between private practice and some government work. Do you have a preference between the two? I mean, obviously you're in government now.

And I've been here for almost 14, 15 years now. I mean, this is my career now. I've been doing it since 1990, and I intend to do it until I retire. I enjoyed being a prosecutor more than anything else. That's why I came back and why I'm doing it. It just to me was more emotionally satisfying. It wasn't necessarily financially satisfying. I just felt that this was the right thing for me to do. I enjoy it, I have a sense of what I do is worthwhile. It probably ties back to growing up in the sixties, and having this sense that justice was important. And achieving justice is important. And I feel that I can have some small role in that in this job.

Have you ever considered leaving the Philadelphia area? You've been here for a while.

No. I mean, part of it is family. My wife is a tenured college professor at Temple, so it's kind of hard to pull up roots here. My kids are almost all grown, I have one who's a high school senior, and I don't want to disrupt their lives. I mean I've had the opportunity, within the Department [of Justice], to go to other cities and I've turned it down. I've said my wife is here and I'm not disappearing, particularly when my kids are in high school. I'm not disappearing for weeks at a time.

Do you remember a particular case or experience during your years in government that just resonates with you?

There are a lot. But there is one that probably really resonates because everything fell together just right. It was a case I tried in the early 1980s. A union corruption case. It basically was an embezzlement case by the head of a Teamsters local that . . . the head of a Teamsters Local is the Secretary/Treasurer, the number two person is the President. The scheme that they cooked up was to pay extra expense money to the business agents and there were ten of them in this union. And the business agents had to cash their check every week or every two weeks and pay the cash back to the Secretary/Treasurer. And so the Secretary/Treasurer agreed to plead guilty early on. A union has to file a report with the Labor Department every year called an LM-2, in which they list where the money went. And it's signed by the two officers in this union, the Secretary/Treasurer and the President. We were going to charge both of them. . . we were going to charge the President, we were going to charge the Secretary/Treasurer with embezzlement, we were going to charge both of them with filing false LM-2s. And the Secretary/Treasurer would

plead guilty, as long as he didn't have to plead guilty to embezzlement. This was back before sentencing guidelines. And back in the days when the law was that if someone was convicted, they weren't removed from Union office until all their appeals were done. And he was willing to plead guilty and resign, so that was a good thing. So that we took that and then went ahead and charged the President with filing the false LM-2s. He wasn't the guy that got the money, but he knew where it was going, and signed the reports, and he had a job to protect the Union money and he wasn't doing it. The trial was in front of Judge Ditter who was just a sheer pleasure to try in front of. He was one of the . . . he was bright, he had very good common sense. He could be very funny, and he was just very firm and ran a good courtroom. Tom Bergstrom was the defense lawyer, he was one of the best criminal defense lawyers around. There were some fascinating legal issues and some fascinating factual issues. And it just was one of the great experiences of my career, it was just a fun case to try.

We talk a lot first year about why we punish, and about the different theories of why people punish. What's been your experience? What have you seen that seems to be a plausible rationale for why we have a criminal justice system?

There are two of them that I think resonate for me. And one is retribution, that we punish people because people who do bad things should be punished. I frowned on that in law school—that's uncivilized to have that attitude. The first murder case I tried was . . . there were two defendants in the case. Under Pennsylvania law at that time, defendants had the right to be tried separately. The first defendant had been tried a year earlier and he had been acquitted. It was a double execution slaying. They had taken two young men downstairs in the basement of a house, tied them up and shot them each in the back of the head. I didn't try the first case. I got to try the second case. The families of the victims were in the courtroom. One of them had since moved to Rochester, New York, and they came back for the trial. I convicted the defendant of that murder. And the families came up to me, and the men just hugged me and slapped me on the back. The women all hugged me, and they were crying, because they felt that finally something had been done. That justice had somehow been achieved. And it occurred to me that if the legal system, the state, doesn't do this, then people will take the law into their own hands. There has to be some kind of a credible legal system, and so we take retribution out of the hands of individuals. You know, the tribal warfare that goes on in so many parts of the world. You insult someone in my family, I kill someone in your family, and then you kill someone in my family. And we give that to the state. And I think it serves an important purpose, that if people believe the system works, they don't go out and take justice into their own hands. And I think that's an important part of criminal justice.

And I think incapacitation is clearly important. There are some people who are just bad people, and they shouldn't be out on the street because they're

harmful to you and me. And then there's a general deterrence, which I think doesn't apply as much in violent crime as it does in white collar crime. People do a lot of calculations of what are the risks and benefits of committing this act. And so there's a general deterrence which I think is a valid one as well. That's a much harder one to measure. It's hard to tell which crimes didn't get committed because someone went to jail. But I think that does have some value, because if there's one area that's deterrable, it's the white collar area.

Obviously you've tried difficult cases, emotional cases. How much would you say that you take your work home with you? How involved can you get, do you get?

Talk to my wife about that. During the middle of a trial, I'll wake up in the middle of the night, just wound up. My hands are asleep. I'm a stomach sleeper and I'm grabbing the pillow so hard that I've cut off the circulation in my hands and fallen asleep. So I take it home that way. I mean, I'm thinking about a case when I'm on trial. I try not to . . . when I'm getting things ready, when I'm just doing my ordinary work I think about it, but it doesn't consume me the way when you go on trial it does.

What do you primarily do right now in practice?

Well, right now I'm the chief of the Computer Crimes section. So I deal with what I call hackers and perverts. My jurisdiction is over people who hack into computers and commit crime that way. And I have the child exploitation stuff which is largely done over the Internet today with people exchanging pictures and abusing children and photographing them. So I supervise a lot of that. I don't necessarily handle all the cases myself, I hand them out to other people. But I kind of review them as they go through, check search warrants when they come in because I've seen enough of them that I know what I'm looking for. And that's what I spend most of my day on.

You said earlier that you have children in high school.

One. One left.

How hard is it to do child pornography, the "pervert" cases, when you yourself have children?

I've never had a problem. I mean, it's probably easier if you have kids, because I stopped using the term . . . when I got into this area I did some reading and I quickly stopped using the term child pornography, and I started describing it as images of the sexual victimization of children, because that's what it is.

Pornography has kind of a "Oh, it's not pleasant, but it's harmless". And when you realize that almost everything we see today, we have yet to see a real virtual image. Everything you see is a picture of somebody doing something to a child. And basically, at a minimum, causing severe emotional damage to that kid, for the rest of the kid's life. I don't have any problem doing those cases.

You work a lot with the law of technology. Do you ever wonder whether the law is going to outpace prosecution?

You know, it always is kind of a step ahead of us. But the invention of the automobile made bank robbery a whole lot easier, and we didn't ban the automobile. And the invention of, you know, of rifles and guns made robberies easier but we haven't banned those. So you know, we'll catch . . . we're keeping apace. It's kind of the old game of offense and defense. The offense develops some new strategy and the defense catches up, figures out how to deal with it, and the offense goes back and develops a new way to get around it. So it makes it a challenge.

As long as there'll be robbers, there'll be cops.
Yeah. That's right.

So people have suggested that any form of Internet law, which is partially what you do, is old wine in new bottles. Do you agree with that?

Some of it is. Some of it is old crimes committed in new ways. Computer intrusion is definitely different, cause it's not like a usual intrusion. I can be in my house, you're in Pennsylvania and have the ability to intrude into a computer in Australia. That's not the usual concept of burglary or trespass. So that is different and coming up with a vocabulary to deal with that is something the law is clearly struggling with. But fraud where you use email as opposed to sending a letter is still fraud. There's nothing particularly sophisticated about that other than understanding how email works.

What made you interested in this area?

The boss told me this is what I'd like you to do. I've played around with computers since . . . I think we bought the first computer for the family in 1986. And I realized what they could do to make my job easier. I never got inside one until I got this job, I mean how the insides work.

Are you largely self-taught in terms of computer crimes? Are there training programs?

There are a lot of training programs. The Department is really good about having training for people. When I got the job in September, in November there was a conference for the computer crime people all around the country. And I went to it, and I can tell you it started on a Monday or a Tuesday. The first thing was a half day "refresher" course, and anyone who hadn't been to the course had to show up to the refresher course. So I did that and by day two, where I'm listening to all this stuff from everybody, by the end of day two I was on complete information overload. My brain couldn't process anymore. And then I started doing the cases and learning the stuff. And a year later, when I went to the conference and I went to the refresher course and just said, I know that, I know that, I know that. When I sat through the conference I was able to follow

it. I wasn't a leader, but I was running with the pack at this point. So the combination of having lots of training from people who know what they're talking about and then working in this area – it's like anything else in the world, you learn what you have to learn.

What's the most challenging thing about your job right now?

Part of it's the learning. I'm at probably about 60% of where I ought to be to be really good at what I'm doing. So that's one thing. And the other is on the computer intrusion side, I'm dealing with businesses, what I call the infrastructure protection side, convincing the business community that they ought to be reporting computer intrusions. There's a great reluctance by businesses that are afraid that they will lose their customers or lose . . . or their shareholders will sell their stock, banks will pull the plug in the financing if anyone finds out that there's been intrusion into their system. So getting them to realize a couple of things: (1) people are going to find out sooner or later anyway; (2) you know, as I point out when I talk to banking folks in particular, if you found a broken skylight, sneaker prints and a rifled cash drawer, you wouldn't say "Oh my God, if our customers find out, they'll never come bank here again." The first thing you'd do is pick up the phone and call the cops. So when you're at risk for having a whole lot more stolen why is it you're hiding it? Part of what I do is just try to talk to the business community. Part of it's a fear of what's going to happen when the feds show up, so part of it is explaining what happens, how we do investigations, how it's done in a way that won't . . . you know, we're not going to stop your business from operating, we're not going to run in and seize all your computers. It's an education process.

Do you think that for those people that are afraid to report for computer intrusion that it's because, it's difficult to see a monetary loss as something as tangible as someone breaking into a building?

I'm not sure that – because they ask "What do you need" – then I start and I say well I need damages, I need loss. And loss is under the statute, some impact on the integrity of your data or your system. And loss is start adding up the number of hours you're working on this problem and multiply it by what you pay them. That'll give us our damages, and we'll go from there. I think people just don't understand what's involved, they don't know what's a computer crime. They don't understand that if someone hacked into their computer it is a crime. Most of them look in terms of, "okay, we've been hacked, how do we close the back door and make sure that everything's okay and go on with business."

Do you think that the laws that have been drafted in this area are sufficient to let you do what you need to do?

Basically, yes. I mean, there's some tinkering that still needs to be done. There are some odd problems, very esoteric, on one or two of these statutes. The law is a conservative process, so it first has to find a problem that needs fixing before you fix it. And then you have to go through the political process, convincing the members of Congress that: (a) there is a problem; and (b) that this is the right fix. Other people will weigh in. That's part of the good lobbying process, giving information to Congress. So it takes time. We don't change everything overnight.

You spoke earlier about living through the Vietnam War and living through that time period. Right around the time you became Chief of Computer Crimes was September 11th, 2001. As somebody who has lived through both, how do those periods compare in your mind?

Vietnam is different, because it completely divided this country. It's hard to convey the sense of hostility among groups within the country that were felt during that period. It was for the war, against the war; for civil rights, against civil rights; smoke dope, drink beer; long hair, short hair. It was just this incredible divide in the country, and a very angry divide in the country. September 11th was a very unifying – for all its horror, it was a very unifying thing for this country. The political division since over is the response right. But I don't have a sense of the place falling apart like I did in '67-'69.

To switch gears a little bit away from practice, you lecture on legal ethics. How did you get involved with that?

I'd done some teaching for the Department. I started teaching on exculpatory evidence: *Brady* and *Giglio*. I went to a conference on it. I was designated in this office as the coordinator, which means that when you get a request for a law enforcement official's personnel file to see if there's anything bad in it, the Department came up with a rule that there had to be one person in the office who made the request and one person in each agency who got it, and I was the designated person. I was the First Assistant at the time. And I went to a conference for all the coordinators, and I raised my hand too many times, and spoke too many times, so I got invited to teach. So I started to do teaching on that, which is when I really got to know the subject, because as you probably know by this point, the best way to learn a subject is to have to teach it to somebody else. And then it kind of blossomed into that. They have to give ethics lectures and they thought I was doing a decent job teaching. I got good reviews. I got invited back, so I must have gotten good reviews. And I guess some of the people from the ethics office weren't doing as good a job they felt. I was just one of the people who got asked to do it. I had done some of the stuff while I was first assistant, there were issues over Rule 4.2, dealing with represented parties. I wrestled with . . . I dealt with some other issues over the years. I taught trial advocacy at Temple's program and I was at a program they

had which they called the integrated trial program, where they combined an ethics class with a trial advocacy class. And 3 of the trial problems were attorney disbarment cases for violations of ethics rules. Now they, at least in Pennsylvania, were not things people would get disbarred over. But they made you wrestle with some of these ethical rules. So I'd kind of been playing with them in the background all along. And when I was asked to teach I actually learned a little more.

I think where we are right now as 3Ls, you know, studying for the MPRE and trying to figure out the morass of rules. If you could pick a key point of ethics that just got drilled into graduating law students' heads, what would it be? What for you is the base of what it means to be an ethical lawyer?

First, nothing got drilled into our heads back then. There was no course in legal ethics, at least not one that was mandatory. If there was one, I didn't take it. I'm not sure that's it's an ethical rule. I mean, to me it was the idea of just being honest is just incredibly important. Honesty, if you're in private practice, with your clients, honesty with your opponents, honesty with the court. That doesn't mean surrender, but I think not deceiving people is so important. I think as a lawyer in a courtroom, my reputation is one of the most important things that I have. And it's not easy to get, and it's easy to lose. And you lose it by cheating, and you lose it by being dishonest. And I think if you just keep that in mind, it's not hard to be an ethical lawyer. There are some issues that are tricky. But the day-to-day practice of law, the stuff you learned from your mom and dad will probably keep you in good stead most of the time.

So, in large part, you would say that being a good person and being a good lawyer can be very closely related?

Sure, in a courtroom, when you have to rip somebody apart on cross examination, yes. The problem with that . . . I'm not saying being a good person. Being a good lawyer means representing your client, and that sometimes means taking hard position and causing angst to other people. I go to court and I put people in jail. That doesn't make them happy, it doesn't make their families happy. So to them, I may not be a good person. But, even there I've had – not all cases, but, you know after some cases, they finish, and people understand. Particularly white collar cases, someone will shake your hand after sentencing and say, "I understand you had a job to do." They don't have any personal animosity. I conducted myself fairly. They knew I was on the other side. I treated them fairly during the trial and during the whole investigative process. At least they knew the person on the other side wasn't out to get them.

Do you have any role models now or do you kind of see yourself as at the time to be more of a role model to somebody else?

I'm doing more role modeling for other people. There are some. . . I mean, I've seen lawyers over my career and judges over my career that I've thought highly of and learned from. I do more mentoring now than being mentored at my age.

Do you think there's a real need for mentoring in the legal profession?

I do. I think when you first start out, there are a lot of temptations because you hear that. . . hearing that being honest and candid is the most important thing gets buried sometimes in the press of getting a result. And there's a temptation to cut corners. I remember as a young lawyer, trying to figure out how you drew those lines. So, yeah, having somebody you can go to who says your instincts are rights. And sometimes you need someone to guide you just to say you're doing it so it's proper, but you're not representing your client in a good way. Have you considered doing a different way that meets your needs and the client's needs? That's helpful if you have someone who can give you guidance like that.

I remember years ago doing a presentation for the Bar Association and the problem that we picked was an ethical one, it was your duty to inquire when you have a witness you think may be lying. And I put together a panel with myself and another prosecutor from the DA's office, and two criminal defense lawyers, who had both been prosecutors in the past. I wanted people who had been on both sides. And we eliminated the defendant who wants to lie, because that's a whole separate ethical question. But I remember Tom Bergstrom talking about when your client wants to lie. What Tom would do was videotape a cross examination of his client. He would cross examine them. And he would play back the videotape. And he never had a client want to get on the witness stand after he'd seen the videotape. I thought that was just a great example of how good lawyering and ethical lawyering come together. Instead of arguing with the client—"I can't put you on the stand, you're going to lie"—"Well, what kind of a lawyer are you?" Tom demonstrated why you shouldn't get on the stand to convince the client.

You taught at Penn and Temple. What is it like to come back to Penn as a teacher?

It's weird. You walk in there. I kid about this, but you walk down the hall outside the Dean's office and there are pictures of all the retired professors. When I was going to law school that was all guys who didn't mean anything to me. Now it's all guys who taught me, sitting up there on the wall. It's kind of disconcerting.

That building was renovated while I was there. The library has changed somewhat. During the breaks in the class I would walk upstairs into where the conference room is.

Silverman.

Not Silverman. In the old building. Right up the stairs from our classroom. The library used to be there. My wife was very ill last year. You guys in class didn't know about it. She's doing better now. I met my wife in the library that was there. And sometimes I would go and stand there and look in that space, because I realize that's where we met. It was just kind of neat.

It's odd to come back and be a teacher in a place where you were a student. It's kind of fun. But there are some disconcerting moments when you walk around the place. And now I've got to wear a suit all the time.

Do you think that your students are any better prepared or any less prepared to go out into this world than your class was?

You guys are probably better prepared because of all the practical stuff that you get in law school now. So much of when I was in law school was "We're going to train you to be a Court of Appeals judge." And it takes a long time to get there. You have to practice a long time before you get there. So I think in some ways you're better prepared. Coming out of that law school, you are bright, you are smart enough to figure out a whole lot of stuff. You've got training in a way of thinking that even if you never practice law, will help you. So I think that whether you're better prepared or not as well prepared, you'll do just fine. Because you'll be well prepared to deal with life issues and a career just because of the training you got. May not seem that way sometimes, I realize. I look back, and some of the stuff's not practical, but I can look back and say that my way of approaching problems is a function of going to law school.

Where do you see yourself in ten years?

Coaching swimming. I'll retire at some point. And when I do, I'm not practicing law. I've decided that practicing law for the United States Department of Justice is the best place to practice law. I've been in private practice, it's not as much fun. So when I quit, I want to do something completely different. I've been a swimmer most of my life. I've done a little bit of coaching and I've enjoyed it. The guy that coached all of my teams, I'm friends with him, and I've talked to him already about it, when I retire, coming out and volunteer assistant coach with him.

What was your stroke?

Mostly freestyle. Also butterfly. I still swim, I still compete.

And how do you do?

Well yesterday we did pretty well. Not as well as I used to do. There's a great swimming t-shirt that says, "The older we get, the faster we were." But I had the fun of my 28-year old son and I both went to the same meet yesterday, so we cheered each other on, so that was fun.

If you could flash forward ten years from now, and someone was looking back at your career, what is the thing that you hope they'll say about you?

That my word was always good. That if said I would do something, I would do it. One of the things I actually enjoy about criminal practice is that for the most part, criminal practice is still a handshake deal. So much of civil practice from what I've seen is you get off the telephone with someone, then each of you write a confirming letter about what was said on the telephone, and the confirming letter disagree and you fight for two weeks over that kind of stuff. I've had deals in major mob cases, agreements that they'd stipulate to certain testimony that was agreed to bumping into each other on the way to the courthouse, shaking hands with them. And when I showed up to trial having the stipulations all written out and the attorney signed them. It wasn't, "I never said I would do this." So that to me is probably one of the most important things. I think that's my reputation. And that's the way I'd like to be remembered.

That's great. And that's all the questions I have.
Okay.

N.B. After the interview was completed, Mr. Levy and had a more extended discussion. For the purposes of this project I wanted to record one more of his statements. We were discussing September 11th and the aftermath, and I noted that many people have chosen to leave the country. Mr. Levy responded that he feels that it's important to stay and work to effectuate change, rather than to leave and desert the problem.